STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-111

January 16, 2001

MAINE PUBLIC UTILITIES COMMSISION
Standard Offer Bidding Procedure

ORDER AMENDING STANDARD OFFER PRICES FOR CENTRAL MAINE POWER COMPANY'S MEDIUM AND LARGE NON-RESIDENTIAL CUSTOMERS (PART II)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In our Part I Order (issued December 22, 2000), we increased standard offer prices for Central Maine Power Company's (CMP) medium and large non-residential classes to reflect approximately $3.38 million in increased installed capability (ICAP) costs for January and February 2001. In this Part II Order, we explain the rationale for our decision.

II. BACKGROUND

On December 15, 2000, CMP filed a petition asking the Commission to amend standard offer prices for the medium and large non-residential standard offer classes pursuant to section 8(D)(3) of Chapter 301 of the Commission rules. In its filing, CMP stated that an immediate need for the price change exists as a result of the December 13, 2000 Order by the Federal Energy Regulatory Commission (FERC) that dramatically increased the cost of installed capability (ICAP) through an administratively set ICAP deficiency charge of $8.75/kW-month retroactive to August 1, 2000. Under CMP's current wholesale standard offer agreement for the medium and large classes, ICAP costs are not included in the fixed price and are passed through to CMP. CMP stated that, as result of the FERC order, CMP will undercollect approximately $11.6 million from the medium and large classes if current rates remain in effect through the remainder of the standard offer period (February 28, 2001). CMP requested that a $11.6 million price increase take effect on January 1, 2001 so that current standard offer customers pay the costs of their service and that CMP recovers its costs by the end of the current standard offer period.

On December 18, 2000, CMP amended its petition, stating that it obtained ICAP for January and February 2001 at a cost less than estimated. As a result, it reduced the requested increase to $9.6 million.

On December 20, 2000, the Public Advocate filed comments, stating that he did not oppose the CMP petition. The Public Advocate stated that CMP is in the standard offer business only because the 1999 bid process did not result in acceptable bids and the Company should be made whole for the costs of providing service. The Public Advocate does not, however, support using CMP's asset sale gain account (ASGA) to reduce or eliminate the increase in prices to cover additional ICAP costs, because the account should be used in a manner that benefits all customer classes.

On December 21, 2000, the Industrial Energy Consumer Group (IECG) objected to CMP's petition on the grounds that it is without record justification, that there has been inadequate notice and opportunity to be heard, and that there has been no opportunity to conduct discovery or present evidence. The IECG stated that there are serious questions as to the need, timing and size of the increase, the prudence of CMP's actions, and possible mitigation of the increase. The IECG argued that this proceeding is a utility ratemaking case subject to the standards for the reasonableness of regulated rates and must be processed in accordance with utility rate change statutes. Additionally, the IECG moved that the Commission open a formal investigation into the reasonableness, causes and magnitude of the requested increase, and the prudence of CMP's actions. The IECG further moved that, if a decision is made to reimburse CMP for ICAP costs, the source of the reimbursement should be the ASGA.

A hearing was held on CMP's petition on December 22, 2000. At the hearing, representatives of CMP, the Public Advocate, the IECG, the Mead Corporation, Champion International Corporation, and the Independent Energy Producers of Maine provided comments and arguments to the Commission. During the hearing, CMP stated that approximately $3.38 million of the requested increase is the cost of actual expenditures to cover most of its January and February ICAP responsibility beyond the amount estimated when standard offer prices were set last February. The remainder of the requested increase is associated with retroactive costs between August and December, and estimated costs to cover the rest of the January and February ICAP requirements.

III. DISCUSSION

A. Standard Offer Rates

We increase standard offer rates for CMP's medium and large non-residential classes to recover the approximately $3.38 million in actual ICAP expenditures to cover January and February 2001 requirements. The standard offer rates, effective January 1, 2001 are:

Class	Rate
Medium	0.0640/kWh
Large	0.066327/kWh on-peak
	0.040860/kWh off-peak

We will allow CMP to defer the remainder of its additional ICAP costs for ultimate recovery through the ASGA or other appropriate means.

There are three categories of additional ICAP costs that CMP seeks to recover through increased standard offer rates: (1) costs related to actual purchases of ICAP to cover January and February 2001; (2) projected costs to cover the remainder of the ICAP costs for January and February 2001; and (3) retroactive ICAP costs for August through December, 2000 based on the FERC's $8.75/kW-month ICAP deficiency charge. As discussed below, we increase standard offer rates only to recover the approximately $3.38 million related to the first category of costs.

The first category of costs represents actual and known costs to serve standard offer customers in January and February. It is thus appropriate and consistent with general Commission practice for standard offer customers to pay the costs incurred to provide them with standard offer service. Such treatment is also consistent with our articulated intention to increase standard offer rates to cover CMP's actual supply costs, *Order Directing Central Maine Power Company to Contract for Wholesale Power Supply and Establishing Standard Offer Prices*, Docket No. 99-111 at 7 (Feb. 11, 2000) (*CMP Order*), and our recent decisions to increase BHE's standard offer rates to recover higher than expected standard offer supply costs, *Order Raising Standard Offer Prices in Bangor Hydro-Electric Company's Service Territory*, Docket No. 99-111 (Sept. 21, 2000); *Order Regarding Standard Offer Prices for Customers in Bangor Hydro-Electric Company's Service Territory*, Docket No. 99-111 (July 20, 2000) (collectively *BHE Orders*).

For several reasons, we do not increase standard offer prices to recover the second and third categories of costs. First, the increase to cover the first category of costs is substantial (approximately 16% to 17% increase over prior standard offer rates). Further increases at this time, in our view, would result in rate shock and customer hardships especially since it is the winter season and there was little notice of this increase. Second, the actual retroactive costs and costs of necessary future purchases could be affected by FERC's consideration of stay and rehearing motions regarding its ICAP decision. These costs are thus unknown. If the retroactive and projected costs are included in standard offer rates now and the ICAP decision is modified or reversed, CMP indicated it would be extremely difficult and costly to refund amounts to those customers that actually paid them. Additionally, businesses may make decisions based on the higher rates (e.g., reduce output) such that the resulting harm could not be remedied by subsequent refunds. Third, with respect to the retroactive costs, current standard offer customers are not the same as customers who took standard offer service in any month from August 2000 through December 2000. This creates inequities in attempts to recover past costs from current standard offer customers.

Although the preferred solution would be to recover all ICAP costs from precisely the customers that caused the costs to be incurred, this is not practical. The nature of the second and third categories of costs (particularly the retroactive costs), however, justifies leaving the precise allocation of these costs to a future proceeding. It may be, for example, that the general body of ratepayers should bear the burden of these costs; on the other hand, it may prove appropriate to target their recovery more narrowly, e.g., to the classes of customers for whose benefit the ICAP costs were incurred. Accordingly, we allow CMP to defer its additional costs of ICAP that are not recovered through standard offer rates for future recovery from the ASGA or some other mechanism to be determined. By deferring these amounts, we can more easily track the costs and consider appropriate recovery mechanisms.

B. Review Requirements and Procedures

The IECG argues that CMP's petition to modify standard offer rates is a utility request for a rate increase and must, in essence, be processed in the same manner as a traditional utility rate case. Specifically, the IECG argues that 35-A M.R.S.A. §§ 307 and 310 govern the review of CMP's petition and that traditional rate case procedures, including discovery and the presentation of evidence, apply to the current case. The IECG adds that, as in a typical rate case, the Commission must review CMP's prudence in obtaining standard offer supply and procuring its ICAP requirements.

We disagree with the IECG's premise that CMP's petition represents a request to change utility rates. Maine's Restructuring Act deregulated the provision of generation services. 35-A M.R.S.A. § 3202(2). Such services are no longer provided by public utilities, 35-A M.R.S.A. §§ 102(13), 3201(11), and unlike typical utility services, customers within a region are no longer required to take generation services from a single provider. Thus, we conclude that the provision of standard offer service by CMP is not a utility service.

A plain reading of the statutory sections cited by the IECG as governing utility rate cases, 35-A M.R.S.A. §§ 307 and 310, reveals that they apply to changes in schedules of rates, terms, and conditions regarding "public utility services" and not to rates charged by a utility for non-utility services. The IECG's argument would suggest that rates charged by utilities for unregulated services (e.g., alarm systems business) would be subject to rate case statutes and procedures, a result that is clearly not contemplated by the utility rate statutes.

CMP's petition to change standard offer rates is not a request to change utility rates. The petition is part of the Commission's effort to oversee the selection of standard offer providers and establish standard offer prices. As such, CMP's petition is governed by the standard offer statutes and rules, 35-A M.R.S.A. § 3212; Ch. 301. The current petition is a direct consequence of the Commission's inability to select standard offer providers through a bid process for CMP's medium and large classes for the first standard offer period (March 1, 2000 – February 28, 2001). Under these

circumstances, section 3212 and Chapter 301, § 8(D) allow the Commission to direct the transmission and distribution utility to secure supply and provide default service. If this occurs, the establishment of standard offer rates is governed by section 8(D)(3) of Chapter 301 which states that the Commission:

> shall establish the standard offer rates for the applicable standard offer class(es). The standard offer rates shall reflect the costs of the supply arrangement(s) made pursuant to this section and the incremental administrative costs of the transmission and distribution utility to procure and manage the supply arrangements. The Commission shall, through full reconciliation, ensure recovery by the transmission and distribution utility of all costs of providing standard offer service pursuant to this section, including, but not limited to, the costs of the supply arrangement(s), any incremental administrative costs of procuring and managing the purchases and all applicable carrying costs. After an appropriate period, which period will not exceed one year, the Commission shall make appropriate adjustments in standard offer rates or other rates charged by the transmission and distribution utility to allow recovery of any difference between the actual costs incurred by the transmission and distribution utility to provide standard offer service and actual revenue from standard offer service in that period.

Thus, it is the Commission's responsibility to establish standard offer rates. Such rates are not part of the utility's rate schedules and are not governed by the rate case standards and procedures applicable to utility requests to change rates for utility services. Our decision and process in this case is consistent with our stated intention to assure that standard offer rates cover the cost of service, *CMP Order; Order Authorizing Bangor Hydro-Electric Company to Contract for Wholesale Power Supply and Establishing Standard Offer Prices*, Docket No. 99-111 (Feb. 29, 2000), and our recent decisions increasing BHE's standard offer rates when rates were not covering underlying costs. *BHE Orders.*

C. Prudence Investigation

We decline the IECG's request for a formal prudence review of CMP's supply procurement activities. We approved and explicitly found CMP prudent in entering a supply contract that did not include ICAP. *CMP Order.* Subsequently, CMP has kept us informed of its actions with respect to procuring ICAP. Based on our knowledge of the circumstances, we can find no basis that would warrant initiating a formal investigation of CMP's prudence in this regard.

We note that, under the current circumstances, we would be reluctant to second-guess utility decisions through formal prudence reviews. CMP did not choose to become a standard offer provider, and cannot financially benefit from providing the service. It is required to provide the service as a result of the current state of the New England market and our inability to procure acceptable standard offer service through the Commission-sponsored bid process. The provision of generation service by utilities is an unfortunate occurrence all those involved in industry restructuring hoped would not occur.

CMP has had to make difficult decisions in an immature market that is unstable, unpredictable, and often chaotic. In our view, it has acted reasonably and in good faith in keeping us informed of market conditions, possible options, and planned actions.

Our disinclination to second-guess utility actions in procuring standard offer supply at the Commission's request should not be taken to mean that a utility is under no standard of care in performing this function. Beyond indicating that those who would challenge a utility's decisions in this area would have to meet a high burden, we need not further define the standard of care at this time, in light of our previously stated conclusions about CMP's conduct in this case.

Dated at Augusta, Maine, this 16th day of January, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.